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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... GEORGIA

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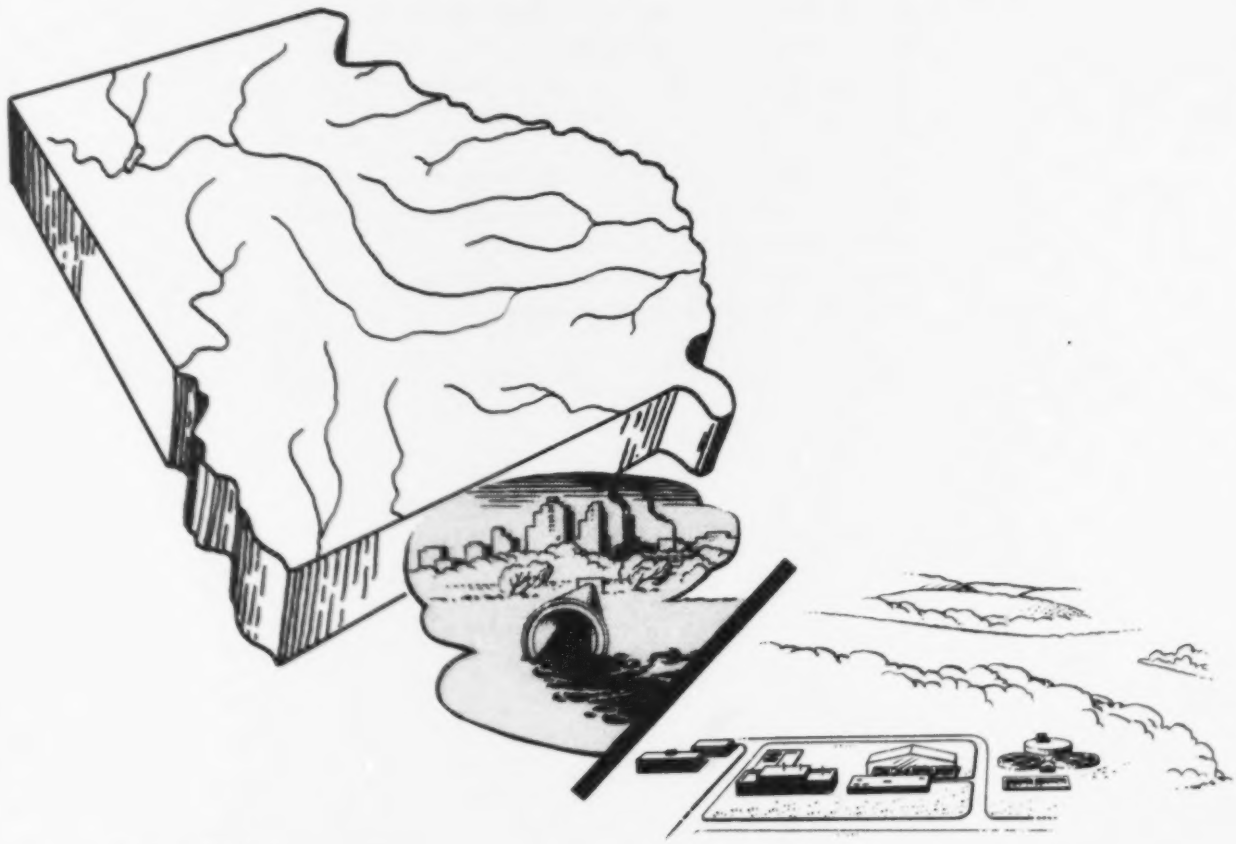
...Georgia



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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

13

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF GEORGIA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

On March 13, 1957, the Georgia Legislature enacted the "Georgia Water Quality Control Act" which is effective on July 1, 1957. The administration of the Act is placed under the State Board of Health which, in addition to its present limited functions respecting water pollution control, is given additional extensive responsibility for controlling the pollution of the waters of the State. In administering the Act the Board has authority to require the use of methods which are not only scientifically possible but also economically feasible and physically attainable from a practical standpoint to prevent and control the pollution of the waters of the State. The Act states that because of substantial and scientifically significant variations in the characteristics, usage, and effect upon public interests of the differences in surface and underground waters of the State, a uniform requirement or requirements will not necessarily apply to all waters or a segment or segments thereof. It is the intent of the Act to confer discretionary administrative authority upon the agency (State Board of Health) to take these and related circumstances into consideration in its decisions and actions in determining, under the conditions prevailing in specific cases, those procedures to best protect the public interests. The Board is designated as the State agency to receive and administer financial aid from the Federal Government or other public or nonprofit sources for purposes of water quality control or water pollution control (Laws of Georgia, 1957, Act No. 491, secs. 2, 20).[1/]

1/ Citations in this digest refer to the Georgia Code Annotated, and the 1955 Cumulative Supplement thereto, unless otherwise noted.

The Act also creates a "Water Quality Council" for the purpose of making recommendations to the Board regarding rules, regulations, procedures, policies, standards, waste disposal certificates, and for the conduct of hearings in review of orders or actions of the Board (Laws of Georgia, 1957, Act No. 491, sec. 5).

II. ADMINISTRATIVE ORGANIZATION

A. State Board of Health

1. Composition and organization

The Board is composed of 14 members, who are appointed by the Governor and confirmed by the Senate; 4 are from the State at large and 1 from each Congressional District. A majority of all the members must at all times be practicing physicians in the State. The Governor also is an ex-officio member of the Board. The Board elects a Director of the Department of Public Health, who must be a graduate physician authorized to practice medicine and surgery in the State, and must have not less than 5 years' experience in the practice of the profession. The Board also elects a Secretary, not a member of the Board, from the clerical staff of the Department of Public Health (Title 88, secs. 102, 106; 1955 Cum. Supp., Title 88, sec. 105).

2. Powers and duties

a) Setting standards of quality of waters

The Board is authorized to establish such standards of quality for any waters of the State in relation to the reasonable and proper use thereof as it deems necessary, and to establish such general policies and standards relating to any existing or future pollution of such waters as

it deems necessary, and to modify, amend, or revoke any such standards or policies so established (Laws of Georgia, 1957, Act No. 491, sec. 4).

b) Issuance of certificates

The Board is authorized to issue certificates covering the operation of public or community water supply systems and industrial waste disposal works, sewerage systems or other waste disposal outlets discharging or permitting to be discharged sewage, industrial and other wastes into or adjacent to waters of the State, stipulating in each certificate the conditions under which such discharge may be permitted or such water supply systems or sewerage systems operated and to deny, revoke, modify, or amend certificates, such denial, revocation or amendment to be made for good cause and after hearing upon at least 30 days' notice to all parties in interest of the time, place, and purpose of the hearing (Ibid).

c) Enforcement

When the Board finds that an emergency exists requiring immediate action to protect the public health, it may without notice or hearing issue an order requiring that such action be taken as it deems necessary to meet the emergency, and such order is effective immediately and must be complied with. However, the person to whom such order is issued can make application to the Council and he must be afforded a hearing as soon as possible. On the basis of such hearing the Council may continue such order in effect, revoke it or modify it (Laws of Georgia, 1957, Act No. 491, sec. 16).

In other cases, the Board may issue orders directing any particular person to secure within the time specified therein, such operating results

as are reasonable and practicable of attainment toward the control, abatement, and prevention of pollution of the waters of the State and the preservation of the necessary quality for the reasonable use thereof. Such orders may be entered only after an opportunity to be heard therein has been afforded to the person with at least 30 days' notice of the time, place and purpose thereof. No such order is to become effective in less than 30 days after the same has been served on the person affected by mailing a copy thereof to such person at his principal office and place of business in the State (Laws of Georgia, 1957, Act No. 491, sec. 4). Persons aggrieved by any order or action of the Board, or its duly authorized agent, may secure a review thereof by the Council (Laws of Georgia, 1957 Act No. 491, sec. 12).

It is unlawful for any person to discharge or permit to be discharged into any waters of the State any sewage, industrial wastes or other wastes which would adversely affect the health of the people through (1) the spread of contagious or infectious diseases, or (2) the dissemination of toxic or radioactive substances, without first having provided treatment facilities approved as to methods of treatment, plans and specifications for the construction of facilities or works and/or the operation thereof by the Board. It is also unlawful to use any waters of the State for the disposal of sewage, industrial wastes, or other wastes, so as to render such waters unsuitable for their then current uses except in such a manner as to conform to and comply with all rules, regulations, certificates and orders established under the provisions of the Act and applicable to the waters involved. It is also unlawful for any person to

erect, construct, enlarge, extend or operate any public or community water supply system, without having first secured from the Board approval of (1) the source of water supply, (2) the means and methods of treating, purifying and storing waters, (3) plans and specifications for the construction of facilities or works, and (4) the operation thereof. The prohibition against discharging sewage, industrial and other wastes does not apply (1) if the discharge is made into any non-navigable waters of the State by anyone who owns all the lands immediately adjacent to the waters lying between the point of entry of the discharge and the point of junction of such waters lying adjacent to lands belonging to others if at such point of junction the quality of the water does not adversely affect the health of the people of the State, or (2) if the person making the discharge has acquired an easement to make such discharge into such waters provided that the water of such stream at a point not more than 3 miles from the point of entry of such discharge, and within limits of the easement, does not adversely affect the health of the people (Laws of Georgia, 1957, Act No. 491, sec. 6).

When in the judgment of the Director any person is engaging in or is about to engage in any act or practice which constitutes or will constitute a grave and immediate public health hazard he may seek to enjoin such act or proposed act by application to the Superior Court. Persons violating any provision of the Act or any rule and regulation adopted and promulgated thereunder or refusing to comply with any final order of the Board, or of a court lawfully issued are guilty of a misdemeanor. Each day the violation continues after conviction is a separate offense (Laws of Georgia, 1957, Act No. 491, secs. 17, 18).

d) Conduct of studies, investigations and research

The Board is authorized to encourage, participate in, or conduct studies, investigations, research and demonstrations relating to the pollution and quality of waters of the State as it may deem advisable and necessary. The Board may also make investigations and inspections to insure compliance with the Act, and the rules, regulations and orders issued pursuant thereto (Laws of Georgia, 1957, Act No. 491, sec. 4).

e) Cooperation with other public and private agencies

The Board may consult with, advise and cooperate with other agencies of the State, and political subdivisions thereof and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other States and the United States and their several agencies on water quality matters (Ibid).

f) Administrative powers

The Board, after consultation with the Council, may adopt and promulgate rules and regulations applicable throughout the State governing installation, use, and operation of systems, methods, and means for controlling the pollution and quality of the waters of the State as may be deemed necessary and such additional rules and regulations governing the procedures of the Board and/or Council with respect to (1) the holding of hearings, (2) the filing of reports, (3) the issuance of certificates and orders, (4) all other matters relating to procedures, and (5) to adopt, amend, or revoke any rule or regulation (Ibid).

The Board has power to issue provisional certificates pending final determination of applications, or final certificates covering the operation of industrial treatment works, other waste outlets, sewerage systems

or public or community water supply systems (Laws of Georgia, 1957, Act No. 491, sec. 7).

Any agent of the Board must be permitted access at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions, processes, methods of treatment, and records relating to the furnishing of water to the public, and affecting the quality of the waters of the State. However, no person is required to disclose any secret formulae, processes, or methods used in any manufacturing operations carried on by him or under his direction or any confidential information concerning business activities carried on by him or under his supervision (Laws of Georgia, 1957, Act No. 491, sec. 8).

3. Preservation of existing rights and remedies

The Act states that it is not intended in any way to create, enlarge or abridge existing rights of riparian owners or others (Laws of Georgia, 1957, Act No. 491, sec. 11).

The Act is intended to supplement existing laws and no part thereof is to be construed to repeal any existing laws affecting the powers and duties of the State Board of Health or the Department of Public Health, nor repeal any existing laws for the protection of fish, shellfish and game or any provisions of the law governing the pollution of lakes and streams of the State (Laws of Georgia, 1957, Act No. 491, sec. 19).

4. Statement of policy; severability clause

It is declared to be the policy of the State that the water resources are to be utilized prudently to the maximum benefit of the people without so impairing its quality as to jeopardize public water supplies and public

health, and without interfering unreasonably with beneficial use of the water resources for recreation, fish and wildlife development, agriculture, and the industrial development of the State's natural resources and its manpower (Laws of Georgia, 1957, Act No. 491, sec. 2).

The Act contains a severability clause (Laws of Georgia, 1957, Act. No. 491, sec. 21).

B. Water Quality Council

1. Composition and organization

The membership of the Council consists of the Director of the State Department of Public Health, the Commissioner of Agriculture, the Secretary of the State Department of Commerce, the Director of the State Game and Fish Commission, who are ex-officio members, and seven citizens appointed by the Governor, representing the following interests: Conservation, Municipal Government, Soil Conservation, Agriculture, Textile Industry, Pulp and Paper Industry, and Food Processing Industry. The Council selects its own Chairman and Vice Chairman. Each ex-officio member can designate a deputy to serve in his place. Of the appointed members first selected, 1 is appointed for 1 year, 2 for 2 years, 2 for 3 years and 2 for 4 years. After the expiration of the first appointments, all terms are to be for 4 years. The Council is required to hold 4 regular quarterly meetings, and such special meetings as are called by the Chairman or upon written request of 5 members. The Council adopts such bylaws, rules and regulations as are deemed necessary. A majority of the members of the Council constitutes a quorum for the transaction of business (Laws of Georgia, 1957, Act No. 491, sec. 5).

2. Powers and duties

a) Review of orders

The Council reviews orders or actions issued by the Board or its agent, upon a petition filed with it by an aggrieved party within 30 days of the order or action of the Boerd; such petition must set forth specifically and in full detail wherein the order is considered unreasonable or illegal, and give reasons and grounds therefor. If the issues raised by the petition have, in the opinion of the Council, been adequately considered and properly determined, the Council may affirm, without a hearing, the order or action of the Board. If it appears to the Council that a hearing is necessary to determine the issues raised, the Council orders a hearing or rehearing. Notice of the time and place of the hearing or rehearing must be given to the petitioner and such other persons in such manner as the Council may order. A petition for a hearing or rehearing is deemed to have been denied by the Council unless it acts thereon within 30 days after the date of filing. (Laws of Georgia, 1957, Act No. 491, sec. 12).

Any person who is adversely affected by a final order or action of the Council directed to such person and affecting the operation of any industrial plant, county, municipality, or community has the right to appeal to the Superior Court of Fulton County or to the Superior Court of the county of his residence or principal place of business in the State. The appeal must be by petition filed in the clerk's office of the court within 30 days after the final order or action of the Council; however, the enforcement of the order or action appealed from is not stayed unless ordered and directed by the reviewing court. The Judge

hears the case de novo without a jury, and renders his decision either approving, setting aside or modifying the order or action appealed from (Laws of Georgia, 1957, Act No. 491, sec. 13). The Attorney General or some member of his staff represents the Board, Council or the Director in all actions under the Act (Laws of Georgia, 1957, Act No. 491, sec. 14).

b) Enforcement

The Council is authorized to appoint hearing officers as agents of the Council to hold hearings on charges of violations of the Act or of rules and regulations issued thereunder and to make findings of fact, prepare such orders as may appear to be necessary and proper and return them to the Council for consideration and action (Laws of Georgia, 1957, Act No. 491, sec. 15).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful to discharge from a vessel or water craft any stone, gravel, or other ballast, into any of the waters or any bay or harbor of the State, or within 3 miles of the outside bar of any such bay or harbor. Violators are subject to a penalty of not less than $500 nor more than $2000 and by imprisonment not exceeding 3 months (Title 98, secs. 102, 9902).

It is unlawful for any person to place the carcass of a horse, cow, sheep, goat, dog, or other animal in any stream. Violation is a misdemeanor (Title 38, sec. 9923).

It is unlawful to float sawdust into any of the streams of the State. Violation is a misdemeanor (Title 26, sec. 3701).

The owner of land through which a nonvavigable watercourse flows is entitled to have the water in such stream come to his land in its natural and usual flow and the pollution thereof so as to lessen its value to him is a trespass upon his property (Title 102, sec. 1407).

It is a felony for any person to wilfully and wantonly poison any spring, fountain, well or reservoir of water. Violators are subject to imprisonment for a term of not less than 2 nor more than 20 years (Title 26, sec. 8112).

It is a misdemeanor for any person to use dynamite, explosives or destructive substances, including poisons, walnut hulls, lime, and others, for the purpose of catching, killing, taking or harming fish (1955 Cum. Supp., Title 45, sec. 703).

The Oil and Gas Commission is authorized to make rules, regulations and orders for, among other things, the prevention of the pollution of fresh water supplies by oil, gas or salt water (1955 Cum. Supp., Title 43, sec. 713).

The State Department of Health has the authority to inspect oyster beds and upon discovering that such beds are subject to pollution which renders the oysters dangerous to health it may immediately condemn such beds or areas. The Department has the further authority to make specific orders regarding the growing and handling of oysters and the disposal of polluting matters which may affect the purity of oysters as it may deem necessary (1955 Cum. Supp., Title 45, sec. 926).